

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

2006-7008

LANDA P. MACDONALD,

Claimant-Appellant,

v.

R. JAMES NICHOLSON, Secretary of Veterans Affairs,

Respondent-Appellee.

Mark R. Lippman, The Veterans Law Group, of La Jolla, California, for claimant-appellant.

Domenique Kirchner, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, for respondent-appellee. With her on the brief was Peter D. Keisler, Assistant Attorney General, Jeanne E. Davidson, Director, and Todd M. Hughes, Assistant Director. Of counsel was Deborah A. Bynum, Assistant Director. Of counsel on the brief were David J. Barrans, Assistant General Counsel, and Ethan G. Kalett, Attorney, United States Department of Veterans Affairs, of Washington, DC.

Appealed from: United States Court of Appeals for Veterans Claims

Judge Robert N. Davis

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DECIDED: September 10, 2007

Before MICHEL, Chief Judge, NEWMAN and MOORE, Circuit Judges.

PER CURIAM.

Landa P. MacDonald (“MacDonald”) appeals from a decision of the United States Court of Appeals for Veterans Claims affirming the denial of MacDonald’s service-connection claim for the death of her veteran-husband. On appeal, MacDonald presents a single issue, namely, whether an adverse presumption in favor of the claimant should be applied when the veteran’s service records have been lost by the Government. MacDonald, however, conceded both before this court as well as the court below that we previously rejected such an adverse presumption in Cromer v. Nicholson, 455 F.3d 1346 (Fed. Cir. 2006). MacDonald notes only that Cromer is “not yet final, as a petition for a writ of certiorari is currently pending before the Supreme

Court.” After MacDonald filed her opening brief, the Supreme Court denied the petition in Cromer. Cromer v. Nicholson, 127 S. Ct. 2265 (2007). Because MacDonald concedes that Cromer controls the outcome of her appeal, we affirm.